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PETITION FOR REHEARING

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1027

ROBERT WAVERLY HICKS, ET AL.,
Petitioners

v.

PHYSICAL THERAPISTS EXAMINING BOARD
FOR THE DISTRICT OF COLUMBIA
Respondent

PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATUTES

Constitution of the United States:

Fifth Amendment 2, 4
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Physical Therapists Practice Act, Public Law 87-280:

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Physical Therapists Practice Act, D.C. Code Annotated (Supp. V, 1966), Sec. 2-451 - 2-472:

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Petitioners, Robert Waverly Hicks, Leona E. Schramm and Cecilia M. Hlebanja, respectfully request that this Court grant a Rehearing of its Order of March 18, 1968 denying their Petition for a Writ of Certiorari and that a Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit in the above styled case as prayed for in the petition filed on January 16, 1968.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT OF CERTIORARI

Petitioners state that in timely fashion they commenced preparation of a reply brief pursuant to Rule 24 (4) immediately following the filing of respondent's brief in opposition to the petition. As promptly as received from the printer, the same was delivered to the Court. The petitioners' reply brief to respondent's opposition was filed with the Clerk at 10:35 A.M. on Friday, March 15, 1968. At that time the petitioners were informed that the Court was already in conference. This reply brief, although docketed immediately, may have arrived too late for consideration by the Court before its decision to deny the Writ of Certiorari.

On the assumption that the reply brief, which fully answers all of respondent's arguments, arrived too late and that the Court has not had the opportunity to consider petitioners' reply brief in conjunction with the other grounds for a Writ of Certiorari, petitioners urge that the Court should grant a rehearing in this cause and consider the serious and erroneous decision of the court below. The issues raised in the Petition for a Writ of Certiorari and the reply brief are more than a local issue confined to the boundaries of the District of Columbia. The issue of standards as guidelines for the control of Administrative Boards and Agencies have far reaching implications on a national scale.

Petitioners contend that they have been denied due process of law under the 5th and 14th Amendments of the Constitution. The United States Court of Appeals for the District of Columbia Circuit totally lost sight of the law in condoning the totality of errors in prior proceedings and injecting the element of Section 4(e) of the Physical Therapists Practice Act [D.C. Code Ann. § 2-453(e), Supp. V, 1966], into the cases. The instances where that Court lost sight of the law were the tainting of the record by the Chairman of the Board without legal justification, the overlooking of the multiplicity of arbitrary and capricious acts of the Board, the ignoring of the Board's threat of criminal prosecution

of the petitioners, the compounding of the errors by the District of Columbia Court of Appeals when it failed to reverse for prejudicial error,[1] and in the sanctioning of the adoption of Appendix B[2] and the permissive use of the same in conjunction with an oral examination of petitioners.[3]

Petitioners have devoted many years to the practice of physical therapy, Petitioner Hicks - 20 years, Petitioner Schramm - 15 years, and Petitioner Hlebanja - 10 years. They will be unconstitutionally deprived of these many years of diversified experience if not permitted to continue in their chosen profession, as well as, a loss in a building in which petitioners have a financial interest. When Congress enacted the Physical Therapists Practice Act, Section 9(2) [D.C. Code Ann. § 2-458, Supp. V. 1966] with a "grandfathers clause," it was not their intent and purpose to legislate those practitioners out of business who have acceptably engaged in the profession for a number of years, *Watson v. Maryland*, 218 U.S. 173 (1910). That petitioners have met the standards of the *Watson* case is manifested by their years of experience, in the issuance by the Government of the District of Columbia of Professional Business Licenses, since 1960 designating the petitioners as Physical Therapists, the public protection through Professional Medical Malpractice Insurance carried by them and the operation of a highly specialized Physical Therapy Clinic treating patients only upon the prescriptions from medical doctors.

For the reason stated in the Petition for a Writ of Certiorari and in the petitioners' reply brief, and in order to urge the Court to take a second look at the far reaching issues involved, the petitioners file this Petition for Rehearing.

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[1] Petitioner Hicks - Opinion of District of Columbia Court of Appeals, JA 188.

[2] "APPENDIX B, CRITERIA FOR MEETING REQUIREMENT OF PUBLIC LAW 87-280, SECTION 9, (2) 'RECEIVED COMPARABLE [TRAINING OR] . . . EXPERIENCE IN THE PRACTICE OF PHYSICAL THERAPY . . .'". (JA 91-102)

[3] This conduct by the Board was proscribed in *Sherman v. Physical Therapists Examining Bd.*, 208 A.2d 728 (D.C.Ct.App. 1965).

CONCLUSION

Because of the denial of due process of law under the 5th and 14th Amendments to the Constitution of the United States, for the reasons set forth here, in the Petition for a Writ of Certiorari, and in the brief in reply to respondent's opposition, it is respectfully urged that rehearing be granted and that, upon such rehearing, a Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit as prayed for.

Respectfully submitted,

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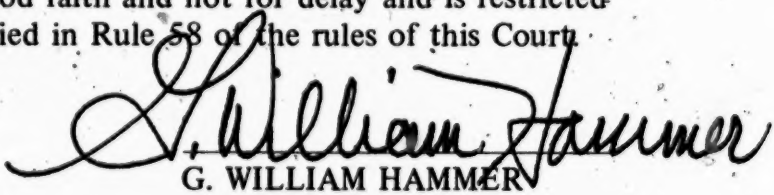
CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.



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